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IN THE

Supreme Court of the United States

OCTOBER TERM 1970

1362

No. 30,248

WOODROW W. CHABERT, PAUL A. CLEMENT, ET AL,

Plaintiffs-Appellants

versus

CITY OF WESTWEGO, ET AL,

Defendants-Appellees

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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The petitioners Woodrow Chabert, Paul A. Clement and others similarly situated pray that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Fifth Circuit rendered in these proceedings on November 20, 1970.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit, as yet unreported, appears as Appendix A page

28. The opinion of Federal District Court for the Eastern District of Louisiana is unreported as appears as Appendix B page 30. The United States Court of Appeals for the Fifth Circuit affirmed the judgment of the District Court on the summary docket.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was rendered on November 20, 1970. See Appendix A. This petition for certiorari was filed less than 90 days from the date aforesaid. The jurisdiction of this Court is invoked under 28 USCA Sec. 1254.

QUESTIONS PRESENTED

The two plaintiffs and others similarly situated filed this suit seeking injunctive relief and requesting a three judge court. The issues presented are as follows:

(1) Whether the mayor is qualified and authorized to sit as judge of the Municipal Court of the City of Westwego while the State Constitution permits the election of a qualified lawyer-judge.

(2) Whether the election procedures of the City of Westwego are constitutionally permissible. The aldermen are elected at large; their election at large is contrary to the Louisiana Constitution and the Louisiana Revised Statutes.

(3) Whether the unlawful action of the City Marshal is constitutionally permissible.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment V

> "No person shall . . . be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. . ."

Constitution of the United States, Amendment VI

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Constitution of the United States, Amendment XIV

> ". . . nor shall any state deprive any person of life, liberty or property without due process of law. . ."

Louisiana Constitution Article 7, Sec. 51 (B)

> "(B) Jurisdiction of City Courts
>
> The legislature may pass laws also conferring civil jurisdiction of City Courts in cities where the combined population of the city and the ward or wards of the parish where situated is more than ten thousand inhabitants, but less than twenty thousand, concurrent with that of the District Court, where the amount in dispute, or the value of the movable property involved, does not exceed Five Hundred Dollars, exclusive of interest and attorney's fees. . . ."

RS 33: 382

"Each city shall be divided into four wards, as near equal in population as can be conveniently provided, the territory of which shall be contiguous. The boundaries of wards may be changed by ordinance passed by a vote of at least two-thirds of all the aldermen elected. When fixed by ordinance the boundaries of the ward shall not again be changed for a period of two years, except for the purpose of uniting thereto territory added to the city limits. No change in the boundary of a ward shall be made, however, less than one year before a municipal election. In case a city is not divided into wards before the first election under this Part, all the aldermen may be elected from the city at large.

"The mayor and board of aldermen of a town shall determine if the town is to be divided into wards; if divided, the whole of this Section shall apply. Where not divided the municipality shall be treated as constituting one ward within the provisions of this Part concerning the subject of registration and elections."

RS 33: 401

"Powers of mayor and aldermen; ordinances authorized.

"A. The mayor and board of aldermen of every municipality shall have the care, management, and control of the municipality and its property and finances. They shall have power: ----------

"(6) To make all police regulations necessary for the preservation of good order and the peace of the municipality; and to prevent injury to,

destruction of, or interference with public or private property.

"(31) To provide for the removal of officers and discharge of employees for misconduct or neglect of duty, subject to any applicable civil service law."

STATEMENT OF FACTS

The relevant facts presented in this petition are as follows:

The two petitioners Woodrow Chabert and Paul A. Clement are policemen in the City of Westwego. This is a class action on behalf of these two petitioners and others similarily situated in the City of Westwego.

One petitioner Paul A. Clement was suspended as a policeman by the Marshal of the City of Westwego. He presented his case to the Civil Service board of the City of Westwego. The Civil Service Board exonerated him and directed his return to duty as a policeman. The Marshal has refused to honor the ruling of the City Civil Service Review Board.

The other petitioner Woodrow Chabert was dismissed from duty for failure to bid the Marshal the time of day. He demanded a hearing by the City Civil Service Board and he also was exonerated. He was reinstated to duty but has been constantly harassed in official duties.

This suit is an outgrowth of the dissatisfaction of these two petitioners and others similarly situated. They are tax paying residents of the City of Westwego. As

per the stipulations on the trial of the rule to show cause Westwego has a population between 10,000 to 20,000 persons. However this population may exceed 20,000. At first inspection this suit appears as a political struggle between two factions. On closer evaluation, it discloses a power entente which engenders itself.

According to the Louisiana Constitution this city is entitled to a City Court with criminal jurisdiction over misdemeanors and civil jurisdiction over a controversy which does not exceed $500.00 exclusive of interest and attorney's fee. The present mayor's court is constitutionally and statutorially unpermissible. The provisions of law have not been implemented. Petitioners contend that this is an unconstitutional application of a constitutional law.

Under the Laws of Act of 1898 Codified as Louisiana Revised Statute RS 33: 382 which provides that:

". . . . each city shall be divided into four wards . . . ." the city has an option not to be divided into four wards, but the City of Westwego has never exercised this option. Further the statute provides that each ward shall elect an alderman and one alderman shall be elected at large. In the City of Westwego all of the aldermen are elected at large, even though the Board of Aldermen has not passed an ordinance not to be divided into four wards.

Petitioners filed suit in the Federal District Court for the Eastern District of Louisiana seeking injunctive relief. A three judge court was requested. A rule to show was granted before Lansing Mitchell. The matter was heard and then dismissed. Petitioners filed for a new

trial; a new trial was granted; reargument on a motion to dismiss resulted in another dismissal. The matter was appealed to the Fifth Circuit Court of Appeals: the appeal was dismissed on the summary docket.

ARGUMENT

Plaintiffs are seeking to have an injunction issued enjoining the municipal government as it is presently constituted for the following reasons. Under the Louisiana Constitution Article 7, Sec. 51, a city which has a population in excess of 10,000 is entitled to a city court with civil jurisdiction concurrent with that of the district court over the movables which do not exceed $500.00 exclusive of interest and attorney's fees, and shall also have criminal jurisdiction not extending beyond trials punishable by imprisonment at hard labor. Under the stipulations on the trial of the rule to show cause the City of Westwego had a population between 10,000 and 20,000 persons so that, therefore, the City of Westwego was entitled to a City Court as set forth under the Louisiana Constitution. The provisions of the Constitution are considered enabling provisions; it is stated that the legislature shall have the power to create such city courts. Plaintiffs showed through the testimony that the persons who appear before the Mayor's court do not receive a fair and impartial trial and that more specifically that the Mayor judicates several types of cases in which he has no jurisdictional authority.

Testimony of Woodrow Chabert, Appendix p. 37-40

"(12) Q. Sir, would you identify that piece of paper that you hold in your hand?

A. That is a Warrant of Arrest, City of Westwego, State of Louisiana — Parish of Jefferson, Mayor's Court.

Q. And what is that Warrant of Arrest for?

A. A Mynus Aizen, who lives in Daigle's Apartments in Marrero. It was issued on the 22nd of November '68.

Q. And what was it for? What was the Warrant issued for?

A. For failing to make payment of accident regular.

MR. STAMPS:

Your Honor, at this time, I would like to make this as Plaintiff—1.

THE COURT:

Are you going to introduce it into evidence?

MR. STAMPS:

Yes, Your Honor.

THE COURT:

Offer it.

MR. STAMPS:

Your Honor, at this time, I offer, introduce and file in evidence as Plaintiff—1, a copy of a Warrant of Arrest directed to a Mynus Aizen for, as it states, failing to make payments of accident regular.

THE COURT:

All right.

MR. STAMPS:

I mark it and introduce it into evidence.

MR. CURRAULT:

I would like to object to this, Your Honor. I would like to see the document.

THE COURT:

Show it to opposing counsel, Mr. Currault.

MR. CURRAULT:

I would like to object to that, Your Honor, it hasn't (14) been verified as a true document of the City of Westwego.

THE COURT:

Well, how did you get this?

THE WITNESS:

Well, could I go into detail?

THE COURT:

Yes.

THE WITNESS:

All right. To my knowledge, this man stole a vehicle in Marrero and he got into an accident

in the parish of Jefferson and he got into an accident on Highway 90, and this is also in the parish of Jefferson.

Now, we was instructed by the Marshal that if this man had a bill to pay every — I believe it's every 2 weeks or every week when he got paid. This man happened to fall down and he's sort of crippled, he's kind of not normal, he fell down at Avondale and hurt himself and we had to pick this man up when payments was due for Mr. Adams that lives on West Drive, which is good friends with the Marshall, and we had to pick him up several times, on several occasions we had to pick him up on this particular Warrant, so I had made (15) a copy of it. I had it in my possession.

THE COURT:

That warrant was given to you in your possession?

THE WITNESS:

It was in my possession, yes, Sir.

THE COURT:

The original of it?

THE WITNESS:

Yes, Sir."

Plaintiffs contend that the citizens of the City of Westwego are denied their constitutional rights under the due process and equal protection clauses of the 14th Amendment and more specifically due process under the

6th Amendment of the United States Constitution. Plaintiffs allege that the State of Louisiana has constitutional authority to remedy these problems but that the State refused to act. Said refusal to act constitutes a violation of the federal constitutional rights of these plaintiffs and other persons similarly situated.

This Court in *Pointer versus Texas* 380 US 400 85 Supreme Court 1065 and 13 Law Ed. 2d 923 held that the guarantees of the Sixth Amendment for the right of confrontation of witnesses and also to a fair and impartial trial should be enforced under the Fourteenth Amendment in state proceedings. In this specific case the Louisiana law provides for a city court, but through a non-application of this law the citizens of the City of Westwego are being denied same and are being denied rights under the Sixth Amendment. For a detailed evaluation of same reference is made to the testimony of Officer Chabert in the evidentiary hearing on the rule to show cause.

The second point is the refusal of the State of Louisiana to implement the provisions of the Lawrason Act, R.S. 33:382 which provides that:

". . . each city shall be divided into four wards. . . ."

Under cross-examination:

The testimony of Mayor Ernest J. Tassin under cross-examination is pertinent as follows: (Appendix p. 51-53)

"(64)

Q. Sir, can you explain to the Court why under

the provision of the Lawrason Act your city has not attempted to district into wards?

A. I can't answer that question directly, because I am not too familiar with it. This would probably have to come under the Committeemen that set up the elections for the city of Westwego.

Q. All right, Sir. Let me ask you another question: To your knowledge, has the city of Westwego ever passed an ordinance or a ruling that Westwego shall not be broken down into wards?

A. No, Sir, not to my knowledge, no Sir, not as long as I have been Mayor there since '65.

Q. Sir, have you ever received an opinion from the Attorney General or from your City Attorney in regards to (65) Revised Statutes 382 in regard to the creation of wards?

A. No, Sir, I haven't.

Q. Sir, if I were to read you that first part: 'Each city shall be divided into four wards,' would you consider — 'well would you explain to the Court why your city has not followed the mandate of that statute and divided it into wards?

A. I would say ignorance to the law.

Q. Ignorance of the law, Sir?

A. Yes, Sir, I'm not too familiar with it, I I haven't read that statute.

Q. All right, Sir. Now, I redirect to one question

you answered prior. Has your city ever passed an ordinance that Westwego shall not be broken down into wards?

A. Repeat that, please.

Q. Has your city or your council ever passed an ordinance or law that Westwego shall not be broken down into wards?

A. Since 1965, since I have been Mayor, no Sir, we haven't, maybe before. I couldn't answer that.

Q. Do you know if the city of Westwego ever had, Sir?

A. I don't believe. I was on the City Council prior to becoming Mayor and I don't remember any ordinances (66) as such."

Under cross-examination Mayor Tassin admitted that the aldermen in the city of Westwego are elected at large; that they do not follow the provisions of La. Revised Statutes R.S. 33:382 that to his knowledge the city of Westwego has never passed an ordinance exempting it from the provisions of La. R.S. 33:382.

Plaintiffs contend that the inaction of the State of Louisiana, in not requiring the city of Westwego to fulfill the statutory requirements in election procedures denies to them equal protection under the laws. The inaction of the state creates a federal constitutional issue which is now before this Honorable Court.

That under the cases of *Baker versus Car* 82 SCt. 691 7 L Ed. 2d 663 and more specifically *Reynolds versus*

Sims 84 S Ct. 1362, 377 US 533 the Supreme Court has determined the rule of law of "one man one vote." In the opinion of *Reynolds versus Sims* 377 US 533 84 S Ct. 1362 decided in 1964 the following has application to this case:

> "The Alabama constitution required the legislature be apportioned decennially; growth of Jefferson Parish Alabama from 1900 to 1960. Jefferson Parish was victim of discrimination."

This case is applicable to the present case because the Alabama constitution required the legislature be apportioned every ten years to account for changes between rural and urban population growths; however, the Alabama legislature from the year 1900 to 1960 refused to follow the Alabama constitutional mandates. In our case the constitution and statutes of Louisiana require that the city of Westwego be divided into wards and that each ward elect an alderman to represent that specific ward. The Louisiana legislature and the election governing bodies have done nothing to implement nor enforce these constitutional and statutory provisions.

Further in *Reynolds versus Sims* on Page 570 the following excerpts has application to this case:

> "Legislative inaction, coupled with the unavailability of any political judicial remedy, had resulted, with the passage of years in the perpetuated scheme becoming little more than an anchronism. Consistent failure by the Alabama legislature to comply with state constitutional requirements as to the frequency of reapportionment and the basis of legislative representation resulted in a minority stranglehold on the state legislature."

In this particular case Westwego was incorporated prior to 1898 under the provisions of the Lawrason Act which has been formulated and made law in LSA RS 33:321 through 481.

Further, under the case of *Dusch versus Davis* 387 US 112 18 Law Ed 2d 656 and 87 S Ct 1154 the provisions of *Reynolds versus Sims* has been applied to apportionment with municipal corporations.

In *Moody versus Flowers* 387 US 97 18 Law Ed 2d 643 and 87 S Ct 1544 it was held that a corporation apportionment suit did not require a three-judge court in that the charter was only local and did not have a state-wide application.

Dusch versus Davis concerned the election procedures of the five boroughs of Virginia Beach, Virginia and attacked the city's consolidation plans. The *Dusch versus Davis* case decided under the principles of *Reynolds versus Sims* seemingly give this court jurisdiction to entertain this case under its supervisory jurisdiction.

Plaintiffs allege that R.S. 33:423 defines the duties of the mayor and aldermen; sub-paragraph 6 states that the mayor and aldermen shall have the power as follows:

> "401. Powers of mayor and aldermen; ordinances authorized
>
> "A. The mayor and board of aldermen of every municipality shall have the care, management, and control of the munici-

pality and its property and finances. They shall have power: . . ."

"(6) To make all police regulations necessary for the preservation of good order and peach of the municipality; and to prevent injury to, destruction of, or interference with public or private property. . . ."

"(31) To provide for the removal of officers and discharge of employees for misconduct or neglect of duty, subject to any applicable civil service law. . . ."

The action of the Marshal of the city of Westwego in suspending Chabert and Clement, two police officers, supersedes his authority under the charters of said corporation. Even after these men had been cleared by the Civil Service Commission which inquire into their suspensions, the Marshal had refused to rehire Mr. Clement and has constantly harassed and impeded Officer Chabert in his official capacities as a police officer. This action to your petitioners violates all canons of due process and further the petitioners have no remedy after reinstatement is ordered by the Civil Service Commission and the Marshal refuses to allow them to function in their capacities as policemen.

Under the provisions of the Revised Statutes above mentioned, the actions of the Marshal of the City of Westwego in firing employees without the approval of the mayor and board of aldermen are in contravention of the Louisiana statutes and such conduct of the Marshal is flagrant disregard of the rights of citizens of Westwego to equal protection under the laws of the United States.

CONCLUSION

It is respectfully submitted that plaintiffs and other persons similarly situated in the City of Westwego are entitled to a city court as set forth under Article 7, Section 51 of the Louisiana State Constitution; they are entitled to have their city broken down into wards and entitled to elect an alderman to represent their ward on the city government as provided for under R.S. 33:382. Lastly, the Marshal of the City of Westwego should be prohibited from acting in derogation of their rights under R.S. 33:401, sub-paragraphs 6 and 31.

Plaintiffs contend that the judgment of the trial court should be reversed. That a three-judge court should be convened and that the government as presently constituted in the City of Westwego should be enjoined, then a new election shall be called in conformity with the provisions of Louisiana law.

Respectfully submitted,

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CERTIFICATE

I certify that a copy of the foregoing brief was served by mail on the attorney for the City of Westwego, Nestor L. Currault, Jr., at his address at 211 Derbigny Street, Gretna, La. 70053 this day of February, 1971.

ROBERT J. STAMPS

APPENDIX A

MINUTE ENTRY MITCHELL, J. JUNE 12, 1970

CIVIL ACTION NO. 70-266 SECTION F

WOODROW W. CHABERT, ET AL

versus

CITY OF WESTWEGO, ET AL

This matter came before the Court on a former date on plaintiffs' motion for a preliminary injunction. After considering the testimony, the arguments and briefs submitted by counsel, plaintiffs' petition for injunctive relief is denied.

Plaintiffs in this action are residents and taxpayers of the City of Westwego, Louisiana, who purport to sue on behalf of themselves and all who are similarly situated. Based upon their contention that the present method of electing aldermen, the existence of a mayor's court and failure of city officials to follow the state laws deprive them of their rights under the United States Constitution, plaintiffs now move to enjoin defendants from "proceeding with the municipal government and mayor's court as presently constituted".

Under Louisiana law, municipal corporations are divided into cities, towns and villages. Those having 5000 or more inhabitants are cities.[1]

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[1] La. R.S. 33:322.

We took judicial notice of the fact that the City of Westwego, Louisiana has a present population of more than 10,000 and less than 20,000 inhabitants.

In 1898 the Louisiana Legislature passed Act 136, commonly known as the Lawrason Act, which was a general legislative charter for all municipalities created after July 29, 1898. This statute set up the form of government for municipal corporations and defines their powers and duties.[2]

Under the present Louisiana law, there are three principal forms of municipal government — the Mayor-Board of Alderman Form, the Commission Plan and the Commission Manager Plan.[3]

Under the Alderman's form of government the elected officers consist of a mayor, a variable number of aldermen and a marshal. The distinguishing feature of the Aldermanic form is that aldermen are, as a rule, elected from various wards in the municipality rather than from the municipality as a whole, whereas the distinctive feature of the Commission Plan of Government is that the governing body is elected at large.[4]

The City of Westwego operates under the Aldermanic form and its municipal council is composed of the mayor and five aldermen who are elected at large for a term of four years. Each voter in the city is entitled to vote for five aldermen.

Plaintiffs contend that under the state law, Westwego

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2 R.S. 33:321 *et seq.*

3 *Chapman v. Bordelon*, 138 So.2d 1 (1962).

4 La. R.S. 33:501 *et seq.*

should be divided into wards, each of which would have one alderman elected and representing it and that the present method of electing these officials is constitutionally impermissive.

Louisiana law provides:

> "Each city shall be divided into four wards . . . In case a city is not divided into wards before the first election under this Part, all the aldermen may be elected from the city at large.
>
> "The mayor and board of aldermen of a town shall determine if the town is to be divided into wards; if divided, the whole of this Section shall apply. Where not divided, the municipality shall be treated as constituting one ward . . ."[5]

Westwego is approximately 50 years old; and the city has never been divided into wards, the aldermen having always been elected at large.[6]

Where the Board of Aldermen have not divided a town into wards, aldermen are to be elected at large.[7]

It should be noted here that there is no claim that any eligible citizen in Westwego is being denied the right to cast his vote in any election, nor do plaintiffs maintain that the state statute is unconstitutional. On the contrary, plaintiffs contend that the Louisiana law is *constitutional*; that Westwego must be divided into wards and defendants, by ignoring state law and employing the 'at large' system of electing aldermen, have denied plain-

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[5] La. R.S. 33:382.
[6] Testimony of Mayor Tassin.
[7] Op. Atty. Gen. 1944-46 p. 617.

tiffs the right of one-man, one-vote representation in their city government. Plaintiffs' contention is that by an 'at large' election they are being denied a representative form of government in that they cannot elect, by their own votes, an alderman from their particular district who would be favorable to their particular interests and needs.

The right protected by the one-man, one-vote rule is that whenever persons are selected by popular election to perform governmental functions, the Equal Protection Clause of the 14th Amendment requires that each qualified voter has a constitutional right to have his vote be given substantially equal weight to that of other voters.[8]

This principle not only applies to elected legislative bodies at state level but also to those elected at local levels, such as cities and towns.[9]

Concededly, the municipal council is the legislative body enacting laws affecting the City of Westwego.

Clearly, in the present system, each vote has exactly the same weight as any other.

The system of electing legislative bodies in an 'at large' system election is quite commonly used. There are advantages and disadvantages to the use of either the 'at large' system or the ward system of election. One supposedly ensures the election of an official who can com-

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[8] *Reynolds v. Sims*, 84 S. Ct. 1362 (1964).

[9] *Avery v. Midland County, Texas*, 88 S. Ct. 1114 (1968); *Kapral v. Jepson*, 271 FS 74 (D. Conn.-1967); *Ellis v. Mayor & City Council of Baltimore*, 352 F2d 123 (CA 4-1965); *Martmolich v. Dean*, 256 FS 612 (SD Miss.-1966).

mand wide support throughout the entire community and will be representative of and responsive to the needs of the community as a whole. His tenure depends upon the city-wide electorate and he must be vigilant to serve the interests of all the people in the city and not merely those of a particular ward. The other is designed to ensure representation of the particular interests of the separate geographical segments of the community. It may well be that one who would be elected under one system might not be able to win election under the other. There are many considerations which may justifiably lead a city to adopt one method of election rather than the other.

It has clearly been held that the at large system is not, per se, unconstitutional.[10]

The constitutional test under the Equal Protection Clause is whether there is an invidious discrimination.[11]

It might well be that in a particular circumstance, an at large system would be invalid. However, where the requirements of *Reynolds v. Sims* are met, apportionment schemes will constitute an invidious discrimination only if it can be shown that an 'at large' system under the circumstances of a particular case would operate to minimize or cancel out the voting strength of racial or political elements of the voting population.[12] That issue was not presented here. We find that the present method

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[10] *Fortsen v. Dorsey*, 85 S. Ct. 498 (1965); *Dusch v. Davis*, 87 S. Ct. 1554 (1967); *Owens v. School Comm. of Boston*, 304 FS 1327 (DC Mass.-1969).

[11] *Baker v. Carr*, 82 S. Ct. 691; *Reynolds v. Sims, supra.*

[12] *Burns v. Richardson*, 86 S. Ct. 1286 (1966); *Chavis v. Whitcomb*, 305 FS 1364 (SD Ind.-1969).

of electing aldermen in the City of Westwego does not violate plaintiffs' constitutional rights.

We have been shown no evidence of any discrimination, purposeful or otherwise, against any group of voters in the 'at large' election system in Westwego and, in the absence of such a showing, petitioners are not entitled to any relief on the basis of this claim.

Ernest J. Tassin is the duly elected mayor of Westwego and serves as Judge of the Mayor's Court. Petitioners contend that, because of Westwego's population, it is entitled to a city court with an elected judge.

Mayor's Courts were created by the Louisiana Legislature in 1898 by passage of the Lawrason Act.[13]

Although the Louisiana Constitution authorizes the legislature to abolish justice of the peace courts and create in their stead district courts in cities equal in population to that of Westwego,[14] that same section of the constitution authorizes Mayor's Courts.[15]

We have been unable to find any law, nor has any been cited which states that the abolition of justice of the peace courts abolishes Mayor's Courts as well.

The City of Westwego comprises a portion of the Fourth Ward for the Parish of Jefferson. Pursuant to

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[13] L.R.S. 33:441 Mayor's Court: . . . there shall be a Mayor's Court in the municipality, with jurisdiction over all violations of municipal ordinances. The mayor may try all breaches of the ordinances and impose fines or imprisonment, or both, provided for the infraction thereof.

[14] La. Const. Art. 7, Section 51B.

[15] La. Const. Art. 7, Section 51E.

constitutional authorization,[16] the state legislature enacted laws creating a parish court system in Jefferson Parish in lieu of a city courts system.[17]

There is no evidence in the record of this case which would cause us to find that because there exists a Mayor's Court in the City of Westwego, petitioners are being denied their rights under the laws and the Constitutions of the State of Louisiana or of the United States.

Jefferson Parish is composed of numerous municipalities, each having its own Mayor's Court which hears violations of City ordinances and the right to appeal an adverse decision therein is vested by the Louisiana Constitution.[18]

We conclude that the existence of a Mayor's Court in the City of Westwego does not deny petitioners equal protection of the laws or due process of law under the 14th amendment nor any constitutional rights guaranteed them under the 6th amendment to the United States Constitution.

Petitioners are policemen who were employed by the City of Westwego; defendant Sidney Guillot is the elected marshal.

Because of the large turnover of employees in the Police Department,[19] on July 1, 1965, the Mayor and the Board of Aldermen passed a resolution delegating to

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[16] La. Const. Art. 7, Sec. 51A.
[17] La. R.S. 13:2561.1 *et seq;* La. R.S. 13:2562.1 *et seq.*
[18] La. Const. Art. 7, Section 36.
[19] Testimony of Mayor Ernest Tassin.

Marshal Guillot the power, as Chief of Police, to suspend, hire and fire police officers.[20]

Pursuant to this authority, he suspended petitioner Chabert and fired petitioner Clement.

Under the remedies afforded by state law,[21] both petitioners were exonerated by the Civil Service Commission and although petitioner Chabert was reinstated, Marshal Guillot refused to rehire petitioner Clement.

There is presently pending in state court a writ of mandamus, brought by petitioner Clement, ordering the City to rehire him as a police officer.[22]

It is petitioners contention that the resolution of the Board of Aldermen[23] was an illegal delegation of power since, under the Lawrason Act, only the Mayor and the Board have the authority to hire and fire city employees,[24] and since the state, acting through the municipality, has failed to take any action to curb Marshal Guillot or to take any positive action to alleviate law enforcement problems existing in the muni pality, petitioners have been denied equal protection of the laws and due process as guaranteed them by the 14th Amendment to the United States Constitution.

The Mayor and the Board of Aldermen exercise the governmental powers of the municipality and are re-

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[20] Exhibit P-2.

[21] La. R.S. 33:2531 *et seq.*

[22] Docket No. 124,453; 24th Judicial Dist. Court for the Parish of Jefferson, State of Louisiana.

[23] Exhibit P-2.

[24] La. R.S. 33:321 *et seq.*

sponsible for policing the city.[25] The Marshal is the Chief of Police; his duties are defined neither by statute or jurisprudence but, because of the nature of his office, he is the chief law enforcement officer of the city and as such has supervision of the police department.[26]

Under the law the Mayor and the Board have the authority to prescribe the duties of all officers and employees of the City and the Marshal has the duty to perform all duties required of him by ordinance.[27]

We conclude that there is nothing in the Lawrason Act that precludes the Board of Aldermen from granting to the Chief of Police the power to supervise the police department, which necessarily entails the hiring and firing of the employees within the department.

No evidence was presented from which we could establish that petitioners' constitutional rights were violated. Adequate state remedies were available and petitioners have made use of them.

---

[25] LSA R.S. 33:362; 33:401; 402(4) and 404.

[26] LSA R.S. 33:423; *Lentini v. City of Kenner*, 211 So.2d 311 (La. 1968).

[27] LSA 33:401(a)(30); 33:423.

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1970

No. 30,248
SUMMARY CALENDAR

D. C. DOCKET No. 70-266

WOODROW W. CHABERT, PAUL A. CLEMENT, ET AL.,
Plaintiffs-Appellants,

versus

CITY OF WESTWEGO, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

---

Before GEWIN, GOLDBERG and DYER, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was taken under submission by the Court upon the record and briefs on file, pursuant to rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that plaintiffs-appellants pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

November 20, 1970

Issued As Mandate: December 14, 1970

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 30,248

SUMMARY CALENDAR*

WOODROW W. CHABERT, PAUL A. CLEMENT, ET AL.,

Plaintiffs-Appellants,

versus

CITY OF WESTWEGO, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

---

(November 20, 1970)

Before GEWIN, GOLDBERG and DYER, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

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* Rule 18, 5th Cir.; See Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al., 5th Cir., 1970, ... F.2d ....., Part I [No. 29278, August 14, 1970].

[1] See NLRB v. Amalgamated Clothing Workers of America, 5 Cir. 1970. ..... F.2d ..... [No. 28680, August 12, 1970].

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IN THE

Supreme Court of the United States

OCTOBER TERM 1970

No. 1362

WOODROW W. CHABERT, PAUL A. CLEMENT, ET AL.,
Plaintiffs-Appellants,

versus

CITY OF WESTWEGO, ET AL.,
Defendants-Appellees.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1970

No. 1362

WOODROW W. CHABERT, PAUL A. CLEMENT, ET AL,
Plaintiffs-Appellants,

versus

CITY OF WESTWEGO, ET AL,
Defendants-Appellees.

ANSWER TO
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ANSWERS TO ISSUES PRESENTED FOR REVIEW

The issues presented for a review herein are:

(1) That Ernest J. Tassin, the duly elected Mayor is qualified to sit as judge of the Municipal Court of the municipality of Westwego.

(2A) That the manner of electing aldermen in the City of Westwego, which is an at large election is not

contrary to the equal protection or due process clause of the fourteenth amendment.

(2B) Further that the voting rights of the constituents of the municipality of Westwego are not being denied either under Louisiana law or under the Federal Constitution.

(3) The actions of Sidney Guillot, Marshal of Westwego, are not a violation of the equal protection clause of the fourteenth amendment.

Defendant-Appellees admit the jurisdiction of the Court.

ANSWER TO QUESTIONS PRESENTED:

I

Ernest J. Tassin, duly elected Mayor of the City of Westwego, is qualified to sit as judge of the Municipal Court of the City of Westwego.

The Mayor's Courts were created by the Louisiana Legislature in the Lawrason Act and more particular L.R.S. 33:441.

> L.R.S. 33:441 Mayor's Court:
> Except as provided in Chapter 7 of Title 13, there should be a Mayor's Court in the municipalities, with jurisdiction over all violations of municipal ordinances. The Mayor may try all breaches of the ordinances and impose fines

> or imprisonments, or both, provided for the infractions thereof.

Revised Statute 33:441 has not been declared either unconstitutional or has it been supplemented with a new statute abolishing the Mayor's Court. L.R.S. 33:441 is still a valid Louisiana statute and the actions of the Mayor are within the intent of said statute.

Petitioner in his complaint has stressed Article 7, Section 51 of the Louisiana Constitution of 1921 which among other things provided for an abolition of the Justice of the Peace courts and the creation of the city court system. But what the petitioner failed to illuminate to the court is that Article 7 Section 51, Sub-section E is pertinent to the question of the Mayor's Court.

> Article 7, Section 51, Sub-section E; Ordinance violation; jurisdiction
> The legislature may vest in Mayors, or in other municipal officers, such jurisdiction of the violation of municipal ordinances as may be found necessary.

It can be ascertained that the constitutional amendment did not abolish the Mayor's Court, and that the abolition of the Justice of the Peace Court did not disturb the power of the Mayor to conduct court where the infractions are those of city ordinances. The Court should also be cognizant of Article 7, Section 51a of the Louisiana Constitution.

51a. Parish Courts Jefferson Parish

The legislature shall have the power to create parish courts in the Parish of Jefferson. The boundaries of such parish courts shall be fixed by the legislature and within such boundaries, they shall have such civil and criminal jurisdiction as may be provided for by the legislature, providing the civil jurisdiction shall not exceed the value or sum of $1,000.00, exclusive of interest and costs, and the criminal jurisdiction shall be limited to trials of offenses not punishable by imprisonment at hard labor under the laws of this state.

The legislature shall provide for the number of judges, their qualifications, term of office, compensation, powers and duties. Upon the creation of such courts the legislature shall provide for the election of the judges thereof by the qualified electors residing within the jurisdictional boundaries of such courts at the same time as the district judges are elected within the state. However, the first judge or judges shall be elected at the state general election held in 1964, to serve until the election of district judges next following the general election.

The legislature shall also provide for the necessary personnel for the operation of such courts and make such other provision as may be considered necessary to establish and operate such courts.

This constitutional amendment was implemented by the legislature in L.R.S. 13:2561.1 et seq. and also L.R.S. 13:2562.1 et seq. The pertinent part for the court is L.R.S. 13:2562.1 which created the boundaries of the Second Parish Court for the Parish of Jefferson.

> 2562.1 Creation; Territorial boundaries
> There is hereby created a court to be known and designated as "The Second Parish Court for the Parish of Jefferson, State of Louisiana," the territorial boundaries of which shall be wards 1, 2, 3, 4, 5, 6 and 11 of the Parish of Jefferson which is composed of all that territory in the Parish of Jefferson lying west of the Mississippi River. Acts 1966 No. 5 Sub-section 1.

Presently the Second Parish Court for the Parish of Jefferson encompasses the Fourth Ward and Westwego comprises only a part of said Ward. Thereby the legislature instead of creating the city court system created in lieu thereof the parish court system in Jefferson. The Parish is composed of numerous municipalities each having their own Mayor's Court which hear violations of their city ordinances. The next rung of the ladder is the parish court whose jurisdiction is defined in L.R.S. 13:2562.3. This article gives the parish courts the jurisdiction of all criminal cases arising either on the east or west bank of the Mississippi River, but shall not include capital cases or those crimes or offenses which are punishable by imprisonment at hard labor under the laws of this state.

The appellants in their complaint state that the Mayor's Court is a denial of equal protection and due process of law, but what the appellants fail to point out to the court is that a person receiving an adverse judgment in the Mayor's Court has the right to appeal. Article 7 Section 36 of Louisiana Constitution lays out the appellate jurisdiction of the district courts.

> Article 7 Section 36 Appellate jurisdiction; trials de novo
> The district courts have appellate jurisdiction, except as otherwise provided in this constitution, for the following cases; All appeals in civil cases tried by Justice of the Peace within their respective jurisdiction; all appeals in civil cases tried in city or municipal courts within their respective districts where the amount in dispute, or the value of the movable property involved does not exceed $100.00, exclusive of interest; all appeals from orders of Justices of the Peace requiring a peace bond; *and all appeals from sentences imposing a fine or imprisonment by Mayor's Court or by city or municipal court.* (Emphasis ours) These appeals shall be tried de novo and without a jury; but no evidence shall be admitted on the trial de novo which was not offered in the lower court unless it is shown to the satisfaction of the court that, despite the exercise of reasonable diligence by the party offering it, such evidence could not have been produced at the trial in the court below.

From the above it can be readily ascertained that the present composition of the Mayor's Court in the City of Westwego is not unconstitutional and does not violate the laws of the State of Louisiana. (See also Judge Lansing L. Mitchell's reasons for Judgment dated June 15, 1970, Index pages 25, 26, and 27).

The appellees contend that the citizens of the City of Westwego are not being denied their constitutional rights under the due process or equal protection clauses of the Fourteenth Amendment nor are they denied due process under the Sixth Amendment of the United States Constitution. The Mayor's Court for the City of Westwego is not a violation of the Fourteenth Amendment of the United States Constitution.

The people of Westwego have the right to determine who shall sit as the Judge of the City Court, which they have done by electing the Honorable Ernest J. Tassin, Mayor. If the plaintiffs are not satisfied with the particular decisions, the remedy lies with the people and the ballot or impeachment proceedings.

It is not unusual to have some people dissatisfied with the decisions of Court.

II-A

The manner of electing the board of aldermen in the City of Westwego is not a denial of either due process or the equal protection clause of the Fourteenth Amendment. The manner of electing the board of al-

dermen in the City of Westwego does not violate the Lawrason Act, (L.R.S. 33:382).

The appellants contention is that because the board of aldermen in the City of Westwego run at large rather than from any particular ward this denies petitioner the right to one man-one vote rule laid down by the Supreme Court.

It has clearly been held that an at large system is not per se unconstitutional, *Fortsen vs. Dorsey*, 85 Supreme Court 498, 1965; *Dusch vs. Davis*, 87 Supreme Court 1554, 1967; *Owens vs. School Commissioner of Boston*, 304 Fed. Supplement 1327 (DC 1969).

The constitutional test under the equal protection clause is whether there is invidious discrimination.

It might well be that, in a particular circumstance, an at large system would be invalid. However, where the requirements of *Reynolds vs. Simms* (84 Supreme Court 1362; 1964) are met, apportionment schemes would constitute an invidious discrimination only if it can be shown that an at large system under the circumstances of a particular case would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. *Burns vs. Richardson*, 86 Supreme Court 1286, (1966); *Chavis vs. Whitcomb*, 305 Fed. Supplement 1364, (SD Indiana 1969).

The leading case is *Dusch vs. Davis*, 387 U.S. 112, 87 Supreme Court 1554 where Mr. Justice Douglas speaking as the organ of the Court approved of a so-

called seven-four plan of city government. By this plan there were seven members who must reside in each individual borough of Virginia Beach and must run at large, with an additional four members of the city council also running at large. Thereby all members of the city council ran at large. However, the seven must come from each particular borough.

> "*The seven four plan makes no distinction on the basis of race, creed, or economic status or location. Each of the eleven councilmen is elected by a vote of all the electors in the city.* (Emphasis ours) The fact that each of the seven councilmen must be a resident of the borough from which he is elected, is not fatal. In upholding a residence requirement for the election of state senators from a multi-district county we held in Fortson v. Dorsey, 379 US 433, 438, 85 Supreme Court 498, 501. 'It is not accurate to treat a senator from a multi-district county as a representative of only that district within the county wherein he resides.' The states use district and multi-district counties merely as a basis of residency for the candidates, not for voting or representation. Each district senator must be a resident of that district, but since his tenure depends on the county wide electorate he must be vigilant to serve the interest of all the people in the county, and not merely those people in his home district; thus in fact he is the county's and not merely the District's senator". (85 Supreme Court at 1555-56)

The United States Court of Appeals for the Fifth Circuit on August 15, 1969 decided the case of *Max B. Goldblatt v. The City of Dallas*, No. 26557, 414 F.2d 774. This case is not on point but it is analogous to the situation which is presently before the court where there is an at large system of electing councilmen. A citizen was claiming it was a denial of equal protection to the voters because a candidate must run at large and as such, it defeats the will of the voters of a particular district.

> "The City Charter of Dallas, Sections 19, 20 and 21 divides the city into six substantially equal districts. These sections provide for the city-wide election of nine city councilmen; six of whom must be residents of the six districts; the remaining three must run at large (six-three plan).
>
> In the Dallas City council election held on April 5, 1967, appellant received the majority of the votes in his residence district but was outpolled in the remaining five districts and lost the election. As a consequence, the defeated candidate sought to vitiate the election results and sought both a preliminary and permanent injunction in the court below restraining the city from holding elections under Section 21 of the Charter.
>
> The appellant urged the entry of the injunctive orders on the ground that Section 21 is unconstitutional as denying the appellant and all vot-

ers in his district equal protection of the law in violation of the Fourteenth Amendment. The court below refused to issue the injunctions and granted the City's motion for summary judgment. After some procedural sparring, this appeal was finally taken.

The appellant wisely does not contend that the Dallas "six-three" city council election structure is unconstitutional per-se. An analogous plan was specifically approved by the Supreme Court in Dusch v. Davis, 387 U.S. 112, 87 S.Ct. 1554, 18 L.Ed.2d 656 (1967). See also Fortson v. Dorsey, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed.2d 401; Davis v. Thomas County, Georgia, 5 Cir. 1967, 380 F.2d 93; Robertson v. Gallion, M.D. Ala. 1968, 282 F. Supp. 157; Reed v. Mann, N.D.Ga. 1964, 237 F.Supp. 22. Rather the appellant's contention is that the charter provision as applied is a denial of equal protection to himself and the other voters of his district.

The essential theory of the appellant is that a Dallas organization known as the Citizens Charter Association (C.C.A.) has used Section 21 to perpetuate and preserve control of the city council. The appellant describes the C.C.A. as a group which is comprised of all powerful millionaires who use their power, influence, position, and money to back their own handpicked candidates.

The appellant asserts that Section 21 is a denial of equal protection to voters because it permits the influence of the C.C.A. to be applied city-wide so as to defeat the will of the voters of a particular district. Further the appellant suggests that Section 21 constitutes a denial of equal protection to independent candidates who are financially unable to compete with the wealth of the C.C.A. on a city-wide basis. The ultimate effect of Section 21, the appellant concludes, is to stagnate public interest and allow the dictates of a few to control the will of the majority.

Taking the facts alleged as true, no denial of equal protection or invidious discrimination has been demonstrated.

The Dallas plan simply requires that every City Council candidate must be elected by the entire city. Therefore, the "one man-one vote" principle is automatically complied with because all votes are equal in a city-wide election. (Emphasis ours) The possibility that a particular resident candidate wins in his district but loses city-wide does not amount to discrimination against either the candidate or against the voters of that district. The election is city-wide and the elected official is a representative of the entire city and not merely of a particular district. Consequently we conclude that Section 21 does not constitute a denial of equal protection either per se or in application.

> Stripped of legalese, the appellant is complaining because the citizens of Dallas either from apathy or by design have not exercised the power of the ballot to rid themselves of what the appellant regards as an evil political machine. Whether this view is right or not need not concern us. The wrong of public apathy cannot be righted by judicial compulsion. The district court was correct in granting the City's summary judgment motion."

In the case at bar we have a situation where in Westwego with the population of between ten and twenty thousand people there is the aldermanic form of government which provides for five aldermen. Each alderman runs at large in the City of Westwego and is responsible to the entire population of the city, not any particular ward. During the trial of the case on the merits the plaintiffs did not prove that the manner of electing aldermen was a violation of the equal protection clause, nor did they show that there was an invidious discrimination against a particular class which would operate to minimize or cancel out the voting strength of a racial or political element of the voting population.

The Answer to Question II is best answered by reiterating the Brief submitted to the United States Court of Appeals for the Fifth Circuit, in these proceedings.

II-B

The plaintiffs-appellants contend that the inaction of the State of Louisiana, in not requiring the City of

Westwego to fulfill the statutory requirements in election procedures denies to them equal protection under the laws of the State of Louisiana and that this inaction creates a federal constitutional issue.

The basis for this argument is that L.R.S. 33:382 provides that each city shall be divided into four wards.

That the word *shall* in R.S. 33:382 make it mandatory upon the various municipalities in the State of Louisiana to divide their area into four wards.

In 1970 the Louisiana Legislature passed House Bill No. 667 Act 121 which provided amongst other things that each city *may* be *divided* into four wards. The defendants-appellees contend that since the legislature has acted and it is clear that Act 121 of 1970 makes it permissive for the cities to have an at large election, and therefore, the question that the appellants raised is now moot.

Does the at large election provided for in L.R.S. 33:382 Act 121 La. Leg. 1970 violate the equal protection clause of the Fourteenth Amendment.

The defendants-appellees contend that it does not since this method of electing officials does not cause invidious discrimination.

III

Appellant allege that the actions of the Marshal of the City of Westwego, in the firing and suspending of

his own deputies without the approval of the Mayor and Board of Aldermen, is in contravention of the Louisiana statute, and such conduct is a flagrant disregard of the citizens of Westwego to equal protection under the laws of the United States.

Appellants, Paul A. Clement and Woodrow W. Chabert, are deputies in the police force of the City of Westwego. Paul A. Clement was fired and Woodrow W. Chabert was suspended by Marshal Guillot. Not going into the merits of either the firing or the suspension, it should be noted by this court that under L.R.S. 33:2531 et seq. that the petitioners have remedies afforded by State law which is the civil service law. That both petitioners have availed themselves to this administrative remedy.

The appellants claim that since Marshal Sidney Guillot exercised the authority vested in him by an ordinance passed by the City of Westwego, his exercise of this authority was a violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

Judge Lansing L. Mitchell in his reasons for judgment dated June 15, 1970 resolved the problem as follows: (Appendix pages 27, 28, 29).

> "It is petitioners contention that the resolution of the Board of Aldermen (La. R.S. 33:2531 et seq) was an illegal delegation of power since, under the Lawrason Act, only the Mayor and the Board have the authority to hire and fire

city employees, (L.R.S. 33:321 et seq) and since the state, acting through the municipality, has failed to take any action to curb Marshal Guillot or to take any positive action to alleviate law enforcement problems existing in the municipality, petitioners have been denied equal protection of the laws and due process as guaranteed them by the Fourteenth Amendment to the United States Constitution. The Mayor and the Board of Aldermen exercise the governmental powers of the municipality and are responsible for policing the city (L.R.S. 33:362; 33:401; 402 (A) and 404). The Marshal is the Chief of Police; his duties are defined neither by statute or jurisprudence but, because of the nature of his office, he is the chief law enforcement officer of the city and as such has supervision of the police department.

Under the law the Mayor and Board have the authority to prescribe the duties of all officers and employees of the City and the Marshal has the duty to perform all duties required by him by ordinance.

We conclude that there is nothing in the Lawrason Act that precludes the Board of Aldermen from granting to the Chief of Police the power to supervise the police department, which necessarily entails the hiring and firing of the employees within the department.

> No evidence was presented from which we could establish that petitioners' constitutional rights were violated. Adequate state remedies were available and petitioners have made use of them".

Therefore, it is readily ascertainable that there is no basis to the petitioners' claim that the Marshal Sidney J. Guillot has disregarded the rights of the citizens of Westwego to equal protection under the laws of the United States, more particularly those afforded to deputies who are the employees of said city.

Answer to Question III is best answered by reiterating the Brief submitted to the United States Court of Appeals for the Fifth Circuit in these proceedings.

Further, the plaintiff, Paul A. Clement, has presently Proceedings No. 4425, Court of Appeals — Fourth Circuit, State of Louisiana seeking to have himself reinstated. This proceeding offers protection as guaranteed under the Constitution of the United States and the question of reinstatement should be determined by the State Court.

IV

CONCLUSION

It is respectfully submitted by the City of Westwego, defendants-appellees, that the claims of the defendants are without merit. What the plaintiffs have attempted to do is to use the Federal Courts as a means to vin-

dicate their personal differences with the city administration. The questions presented are more in the area of a political question as opposed to a federal question.

Petitioners-appellants claim that the Mayor's Court is unconstitutional. The Louisiana Constitution of 1921 in Article 7 Section 51e provides that the legislature can provide for Mayor's Courts. This provision is carried into effect in L.R.S. 33:441. There is also in Jefferson Parish the Parish Court System which was created by the Louisiana Constitution Article 7 Sec. 51a. These provisions were carried forth in L.R.S. 13:2561.1 and L.R.S. 13:2562.1. The City of Westwego is precluded from having a City Court due to the fact that there is the Parish Court System in Jefferson Parish. In order for Westwego to have a City Court it must be by legislative act (La. Const. Art. 7 Sec. 51b).

The defendants-appellees are of the opinion that prior to Act No. 121 of Louisiana Legislature of 1970 that the manner of electing aldermen in Westwego was constitutionally permissive under *Dusch v. Davis* supra and *Reynolds vs. Simms* supra. If there was a violation of L.R.S. 33:382 then this violation was remedied by Act 121 of Louisiana Legislature of 1970. Therefore, this question is moot.

It should be stressed however that the election of aldermen at large in the City of Westwego has never acted to the detriment of any qualified voter, nor is it invidious discrimination to have an at large election.

The third issue presented for review is that the actions of the Marshal Sidney J. Guillot are in contravention of the United States Constitution. The actions complained of were the suspension and firing of the appellants, respectively, from the Westwego City Police force, and that because the Marshal had the right to fire or suspend his own deputies that this was a violation of the equal protection clause of the Fourteenth Amendment. In fact and in law these petitioners have their administrative remedies which are provided for under Civil Service in LRS 33:2531 et seq. These remedies are adequate and said petitioners have availed themselves to said state remedies. Therefore, the conclusions reached by the trial judge and Court of Appeal are correct and certiorari should be denied.

Respectfully submitted,

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CERTIFICATE

I certify that a copy of the foregoing brief was served by mail on the attorney for the plaintiffs-appellants, Robert J. Stamps, at his address 404 Security Homestead Building, 219 Carondelet Street, New Orleans, Louisiana, this ____ day of May, 1971.

LAZARD LEVY